

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JONATHAN COLLIN AUTRY,

Plaintiff,

v.

SCOTT R. JONES, *et al.*,

Defendants.

Case No. 2:22-cv-00554-TLN-JDP (PC)

ORDER:

(1) GRANTING PLAINTIFF'S
APPLICATION TO PROCEED *IN FORMA*
PAUPERIS AND HIS MOTION FOR
EXTENSION OF TIME TO FILE AN
AMENDED COMPLAINT

ECF Nos. 5 & 16

(2) DENYING PLAINTIFF'S MOTION
FOR APPOINTMENT OF COUNSEL

ECF No. 18

SCREENING ORDER THAT PLAINTIFF:

(1) STAND BY HIS AMENDED
COMPLAINT SUBJECT TO A
RECOMMENDATION OF
DISMISSAL;

(2) FILE AN AMENDED
COMPLAINT

ECF No. 17

THIRTY-DAY DEADLINE

1 Plaintiff, who is confined at the Sacramento County Jail, brings numerous unrelated
 2 claims in a lengthy and difficult-to-understand complaint that cannot proceed past screening. He
 3 may file an amended complaint that contains only related claims and sets forth its allegations in a
 4 cogent manner. I will also grant plaintiff's latest application to proceed *in forma pauperis*, ECF
 5 No. 5, and his motion for extension of time to file an amended complaint, ECF No. 16.¹ I will
 6 deny his request for appointment of counsel. ECF No. 18.

7 Screening Order

8 I. Screening and Pleading Requirements

9 A federal court must screen the complaint of any claimant seeking permission to proceed
 10 *in forma pauperis*. See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and
 11 dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon
 12 which relief may be granted, or seeks monetary relief from a defendant who is immune from such
 13 relief. *Id.*

14 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
 15 Fed. R. Civ. P. 8(a)(2), and provide "enough facts to state a claim to relief that is plausible on its
 16 face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not
 17 require detailed allegations, but legal conclusions do not suffice. See *Ashcroft v. Iqbal*, 556 U.S.
 18 662, 678 (2009). If the allegations "do not permit the court to infer more than the mere
 19 possibility of misconduct," the complaint states no claim. *Id.* at 679. The complaint need not
 20 identify "a precise legal theory." *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024,
 21 1038 (9th Cir. 2016). Instead, what plaintiff must state is a "claim"—a set of "allegations that
 22 give rise to an enforceable right to relief." *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264
 23 n.2 (9th Cir. 2006) (en banc) (citations omitted).

24 The court must construe a pro se litigant's complaint liberally. See *Haines v. Kerner*, 404
 25 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint "if it
 26 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
 27

28 ¹ Plaintiff's amended complaint, ECF No. 17, is timely.

1 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).
2 However, ““a liberal interpretation of a civil rights complaint may not supply essential elements
3 of the claim that were not initially pled.”” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,
4 1257 (9th Cir. 1997) (*quoting Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

5 **II. Analysis**

6 As noted above, plaintiff’s complaint contains multiple separate and unrelated claims. For
7 instance, he alleges that, in November 2022, defendant Le violated his rights by finding him
8 guilty of a disciplinary violation without sufficient process. ECF No. 17 at 5. Separately, he
9 alleges that in June 2022, unnamed Sacramento County Sheriff’s Deputies destroyed his property
10 during a search of his cell and used excessive force against him during a strip search of his
11 person. *Id.* at 10. In another claim, plaintiff alleges that he was attacked by another inmate in
12 January 2022 and, despite being innocent of any wrongdoing, was punitively rehoused. *Id.* at 16.
13 The forty-four-page complaint also contains other claims that bear no apparent relation to the
14 aforementioned claims. Claims against multiple defendants can only proceed if they are based on
15 the same “series of transactions or occurrences” and common questions of law. Fed. R. Civ. P.
16 20(a)(2). Plaintiff’s claims are not based on the same transactions or occurrences.

17 On a more basic level, the complaint is hard to understand insofar as the handwriting is
18 faded in parts, see ECF No. 17 at 13-14, and not separated into paragraphs or subsections.
19 Additionally, many of the named defendants receive, as best I can tell, no explicit mention in the
20 body of the complaint. Plaintiff may remedy these deficiencies in any amended complaint he
21 chooses to file.

22 Plaintiff may file an amended complaint. He is advised that the amended complaint will
23 supersede the current complaint. *See Lacey v. Maricopa County*, 693 F. 3d 896, 907 n.1 (9th Cir.
24 2012) (en banc). This means that the amended complaint will need to be complete on its face
25 without reference to the prior pleading. *See* E.D. Cal. Local Rule 220. Once an amended
26 complaint is filed, the current complaint no longer serves any function. Therefore, in an amended
27 complaint, as in an original complaint, plaintiff will need to assert each claim and allege each
28 defendant’s involvement in sufficient detail. The amended complaint should be titled “Second

Amended Complaint” and refer to the appropriate case number.

Motion to Appoint Counsel

I will also deny plaintiff’s motion to appoint counsel. He does not have a constitutional right to appointed counsel in this action, *see Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), and I lack the authority to require an attorney to represent plaintiff. *See Mallard v. U.S. District Court for the Southern District of Iowa*, 490 U.S. 296, 298 (1989). I may request the voluntary assistance of counsel. *See* 28 U.S.C. § 1915(e)(1) (“The court may request an attorney to represent any person unable to afford counsel”); *Rand*, 113 F.3d at 1525. However, without a means to compensate counsel, I will seek volunteer counsel only in exceptional circumstances. In determining whether such circumstances exist, “the district court must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved.” *Rand*, 113 F.3d at 1525 (internal quotation marks and citations omitted).

I cannot conclude that exceptional circumstances requiring the appointment of counsel are present here. The allegations in the complaint are not exceptionally complicated. Further, plaintiff has not demonstrated that he is likely to succeed on the merits. For these reasons, plaintiff’s motion to appoint counsel, ECF No. 18, is denied without prejudice.

I may revisit this issue at a later stage of the proceedings if the interests of justice so require. If plaintiff later renews his request for counsel, he should provide a detailed explanation of the circumstances that he believes justify appointment of counsel in this case.

Accordingly, it is ORDERED that:

1. Plaintiff’s application to proceed *in forma pauperis*, ECF No. 5, and his motion for extension of time, ECF No. 16, are GRANTED.

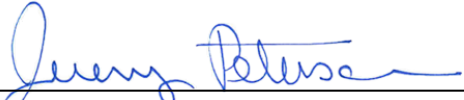
2. Plaintiff’s motion for appointment of counsel, ECF No. 18, is DENIED without prejudice.

3. Within thirty days from the service of this order, plaintiff must file an amended complaint that contains only related claims.

4. The Clerk of Court is directed to send plaintiff a complaint form.

1
2 IT IS SO ORDERED.

3
4 Dated: February 22, 2023


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE